

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

In re:

SHORES OF PANAMA, INC.

CASE NO.: 08-50066-KKS

CHAPTER: 11

Debtor.

ORDER DENYING MOTION FOR RELIEF FROM ORDER GRANTING MOTION BY SILVERTON BANK, N.A. FOR AN ORDER (I) AUTHORIZING THE SALE OF THE SHORES OF PANAMA PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES; (II) SCHEDULING AND APPROVING THE TERMS AND CONDITIONS OF AN AUCTION; (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OR REJECTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (IV) SCHEDULING HEARINGS TO APPROVE THE SALE AND THE ASSUMPTION AND ASSIGNMENT OR REJECTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES BY THE DEBTOR PURSUANT TO SECTIONS 363(b), 363(f), AND 365(f) OF THE BANKRUPTCY CODE PURSUANT TO RULE 60(b) (Doc. 1073)

THIS MATTER came before the Court for hearing on November 21, 2013 on the *Motion for Relief From Order Granting Motion by Silverton Bank, N.A. For an Order (I) Authorizing the Sale of The Shores of Panama Property Free and Clear of All Liens, Claims, Interests, and Encumbrances; (II) Scheduling and Approving the Terms and Conditions of an Auction; (III) Authorizing the Assumption and Assignment or Rejection of Certain Executory Contracts and Unexpired Leases; and (IV) Scheduling Hearings to Approve the Sale and The Assumption And Assignment Or Rejection of Certain Executory Contracts and Unexpired Leases by The Debtor Pursuant to Sections 363(b), 363(f), and 365(f) of the Bankruptcy Code Pursuant to Rule 60(b)* (the "Motion," Doc. 1073) filed by Club at Shores of Panama, Inc., Shores of Panama Restaurant Holdings, LLC, BB Communications, LLC, Shores Beach Services, LLC and Charles K. Breland (collectively, "Movants"). Panama Holdings, LLC, Panama Partners, LLC, Shores of Panama, LLC, Shores of Panama Club, LLC, and Shores of Panama Commercial, LLC (collectively,

“Bulk Buyers”) and the Federal Deposit Insurance Corporation, as Receiver for Silverton Bank, N.A. (“FDIC”) filed responses in opposition to the Motion (Docs. 1091 and 1097). Appearing at the hearing were Robin B. Cheatham, counsel for Movants, Michael P. Dickey, counsel to the Bulk Buyers, and David Tong, counsel for the FDIC. Having considered the Motion, the Responses in opposition, the record, and argument of counsel, the Court finds that the Motion should be denied.

In the Motion the Movants seek relief from an order entered by this Court on March 6, 2009 that, *inter alia*, authorized the procedures for and sale of certain assets of the Debtor free and clear of liens and encumbrances.¹ As a basis for relief, Movants allege 1) that Silverton Bank, a creditor, committed fraud upon the Court; and 2) that the Court lacked jurisdiction over certain pre-bankruptcy condominium owners.² Without reaching the merits of the Movant’s individual arguments the Court denies the relief requested because the Motion is untimely under the applicable rules of procedure.³

Federal Rule 60(c)(1) sets forth the time limits for bringing motions seeking relief from a judgment on the bases alleged by Movant:

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

¹ *Order Granting Motion by Silverton Bank, N.A. For an Order (I) Authorizing the Sale of The Shores of Panama Property Free and Clear of All Liens, Claims, Interests, and Encumbrances; (II) Scheduling and Approving the Terms and Conditions of an Auction; (III) Authorizing the Assumption and Assignment or Rejection of Certain Executory Contracts and Unexpired Leases; and (IV) Scheduling Hearings to Approve the Sale and The Assumption And Assignment Or Rejection of Certain Executory Contracts and Unexpired Leases by The Debtor Pursuant to Sections 363(b), 363(f), and 365(f) of the Bankruptcy Code* (Doc. 640) (the “Sales Procedure Order”).

² Doc. 1073.

³ Fed. R. Civ. P. 60(c)(1); Rule 9024, Federal Rules of Bankruptcy Procedure.

Fraud is enumerated in category three (3) under Rule 60(b). This Court cannot grant relief from the Sales Procedure Order based upon alleged fraud, because the one year time limitation imposed by Rule 60(c)(1) has long since expired.

Movants' other ground for relief is that the Sales Procedure Order is void. A void judgment is enumerated in category four (4) under Rule 60(b). Rule 60(c)(1) requires that a motion for relief under subsection (4) of Rule 60(b) must be made within a "reasonable time." Movants did not seek relief from the Sales Procedure Order within a reasonable time.

When determining whether a Rule 60(b) motion has been filed within a reasonable time, bankruptcy courts should consider "whether the party opposing the motion has been prejudiced by the delay in seeking relief" and whether the movant "had some good reason for his failure to take appropriate action sooner."⁴ Here, the parties opposing the relief have been prejudiced by the delay -- it is undisputed that there have been multiple subsequent sales of the property to bona fide good faith purchasers in reliance on the Sales Procedure Order. Further, the Movants have not shown any good reason for their failure to take any action to seek relief from the order sooner.

The Sales Procedure Order is very clear. In paragraph "e" the Court found that "adequate, proper, and timely notice of the Motion and the Hearing has been given and no other or further notice is necessary."⁵ In paragraph "f" the Court found:

A reasonable opportunity to object or be heard with respect to the transaction requested to be approved in the Motion has been afforded to all parties in interest (including third parties asserting Interests or Claims (as those terms are defined below) in the Property, if any, and parties to the Contracts, as defined below.) *Id.*

On Page 8, the Sales Procedure Order states "[p]ursuant to 11.U.S.C. § 363(f), the Property shall be transferred to Purchaser and, upon the closing of the sale, *the transfer shall be*

⁴ *Armstrong v. Cadle Co.*, 239 F.R.D. 688, 689 (Bankr. S.D. Fla. 2007).

⁵ Doc. 640 at 2.

*free and clear of any Interests and Claims of any person or Entity ...*⁶ It goes on to provide that “[w]ithout in anyway limiting the foregoing, the Interests and Claims identified on Exhibit D attached hereto are removed pursuant to 11 U.S.C. § 363(f).”⁷ The Movants’ names and interests were clearly listed on Exhibit D.⁸

The Sales Procedure Order specifically overruled or otherwise dealt with “[a]ll objections, if any, to the Motion” by stating that they had been withdrawn, waived, or were overruled.⁹ Even more importantly, page 5 of the Sales Procedure Order acknowledged that the Movants consented to the relief:

Pursuant to the Procedures Order, The Club at Shores of Panama, Inc., Shores of Panama Restaurant Holdings, LLC, BB Communications, LLC, and Shores Beach Services, LLC have consented to the sale free of their Interests and Claims.¹⁰

The Movants offered no explanation as to why they waited over four years to seek relief.

Movants also attempted to argue their Motion on behalf of pre-petition purchasers, but offered no reasonable explanation for how they had standing to represent pre-petition purchasers, or their interests.

For the reasons stated, it is ORDERED:

The Motion for Relief From Order Granting Motion by Silverton Bank, N.A. For an Order (I) Authorizing the Sale of The Shores of Panama Property Free and Clear of All Liens, Claims, Interests, and Encumbrances; (II) Scheduling and Approving the Terms and Conditions of an Auction; (III) Authorizing the Assumption and Assignment or Rejection of Certain Executory

⁶ *Id.* at 8 (Emphasis added).

⁷ *Id.*

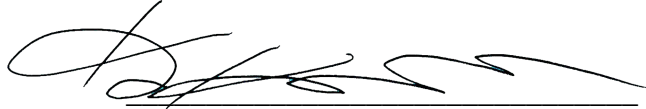
⁸ *Id.* at 30

⁹ *Id.* at 6.

¹⁰ *Id.* at 5.

Contracts and Unexpired Leases; and (IV) Scheduling Hearings to Approve the Sale and The Assumption And Assignment Or Rejection of Certain Executory Contracts and Unexpired Leases by The Debtor Pursuant to Sections 363(b), 363(f), and 365(f) of the Bankruptcy Code Pursuant to Rule 60(b) (Doc. 1073) is DENIED.

DONE AND ORDERED in Tallahassee, Florida, on this 20th day of December,
2013.

A handwritten signature in black ink, appearing to read 'K. Specie', written over a horizontal line.

Karen K. Specie
United States Bankruptcy Judge

cc: all parties in interest